

Eric Grant (Bar No. 151064)
grant@hicks-thomas.com
Hicks Thomas LLP
8001 Folsom Boulevard, Suite 100
Sacramento, California 95826
Telephone: (916) 388-0833
Facsimile: (916) 691-3261

Counsel for Defendant
R.R. STREET & CO. INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

KFD ENTERPRISES, INC., a California
corporation dba Norman's Dry Cleaner,

Plaintiff,

v.

CITY OF EUREKA, et al.,

Defendants,

AND ALL RELATED CROSS-CLAIMS
AND THIRD-PARTY CLAIMS.

No. 3:08-cv-04571-MMC

**STIPULATION AND ~~PROPOSED~~ ORDER
WITH RESPECT TO DEFENDANT CITY
OF EUREKA'S CLAIM FOR PUNITIVE
DAMAGES AGAINST DEFENDANT R.R.
STREET & CO. INC.
[Civil L.R. 7-12]**

Pursuant to Civil L.R. 7-12, Defendant City of Eureka ("Eureka") and Defendant R.R. Street & Co. Inc. ("Street") hereby stipulate and request judicial action as follows:

WHEREAS, Paragraph 92 of Eureka's First Amended Complaint (Doc. 46, filed July 24, 2009) alleges that "[i]n causing the public nuisance alleged herein, Defendants [including Street] acted with oppression, fraud or malice, and in wanton disregard of the health and safety of those impacted by its public nuisance, including Eureka";

WHEREAS, in the absence of the stipulation herein, Street would move to strike Paragraph 92 pursuant to Federal Rule of Civil Procedure 12(f)(2), thereby delaying Street's answer to Eureka's complaint; and

1 WHEREAS, avoiding such a motion and having Street answer Eureka's complaint would
2 promote the just, efficient, speedy, and economical determination of this action;

3 THEREFORE, Eureka and Street stipulate that

4 (1) Paragraph 92 of Eureka's First Amended Complaint is stricken as to Street;

5 (2) such striking shall be without prejudice to Eureka's right, following investigation
6 and discovery, to seek leave of this Court, pursuant to Federal Rule of Civil Procedure 15(a)(2),
7 to amend its operative complaint to assert a claim for punitive damages against Street; and

8 (3) so long as such motion is filed and heard consistent with the deadlines imposed by
9 this Court for the filing and hearing of pretrial motions, Street shall not oppose Eureka's motion
10 on the basis of untimeliness or waiver or similar doctrine.

11 Dated: September 3, 2009.

12 Respectfully submitted,

13 /s/ Eric Grant

14 Eric Grant

Hicks Thomas LLP

15 Counsel for Defendant

R.R. STREET & CO. INC.

16 (The filer hereby attests that concurrence in
17 the filing of this document has been obtained
18 from the signatory below.)

19 DAVIDOVITZ & BENNETT LLP

20 /s/ Charles Bolcom

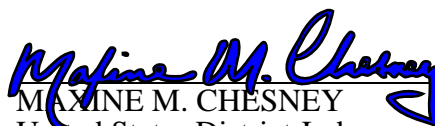
21 MORIS DAVIDOVITZ

CHARLES BOLCOM

22 Attorneys for Defendant, Counter-Complainant,
23 and Third-Party Plaintiff CITY OF EUREKA

24
25 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

26
27 Dated: September 8, 2009

28 
MAXINE M. CHESNEY
United States District Judge